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C O N F I D E N T I A L ASUNCION 000526

SIPDIS

SENSITIVE

STATE FOR A/S NORIEGA, A/S RADEMAKER, PDAS DERHAM, AND PM P
MURRAY AND W BROOKS
STATE ALSO FOR T 7208 HST FRANCIS BOLTON
STATE PASS TO USAID LAC/AA
DOD FOR OUSD(P)/ISP/NP/ICC COL TIA JOHNSON
NSC FOR KIMBERLY BREIER
SOUTHCOM FOR POLAD DAN JOHNSON

E.O. 12958: DECL: 04/19/2015

TAGS: [MARR](#) [PGOV](#) [PREL](#) [PINR](#) [PA](#) [KICC](#)

SUBJECT: PARAGUAY ARTICLE 98 DISCUSSIONS REACH DEADLOCK

REF: ASUNCION 00305

Classified By: PolOff Mark Stamilio, reasons 1.4(b) and (d).

11. (C) As follow-up to the April 6 meeting between A/S Rademaker and FM Rachid in Washington, DC, on April 15, DOD attorney COL Tia Johnson and PolOff met with MFA legal advisor Ernesto Velasquez to discuss the latest versions of draft texts that would provide Article 98 protections in Paraguay (reftel). The meeting indicated that the GOP lacks the political will to deliver the protections we seek. The discussions have reached deadlock.

12. (C) The main issues in contention are as follows:

-- The MFA continues to adhere to a restrictive interpretation of Article 98(2), arguing that its provisions apply only to agreements entered into prior to becoming a State Party to the ICC, and that signing an Article 98 agreement with the U.S. would, therefore, be inconsistent with Paraguay's obligations under the Treaty of Rome.

-- Although the concept of an exchange of Notes referring back to the Extradition Treaty between the U.S. and Paraguay remains theoretically feasible, the MFA will not agree to an exchange of Notes that includes an express statement or declaration by the GOP that it will apply the same consent procedures required by the Extradition Treaty to cases of requests for surrender to non-state entities such as the ICC; nor will the GOP agree to a final Note from the U.S. to the GOP that includes a specific reference to the ICC.

-- Similarly, the MFA is willing to accept references to non-state entities in the Notes, but only if such references are limited by language that refers back to the Extradition Treaty and the protections afforded to U.S. personnel participating in military exercises/exchanges. (Alternatively, Velasquez indicated that eliminating the entire phrase "to any state or other entity" might be an acceptable solution on this particular point.)

13. (C) Velasquez said he would review the drafts again without the phrase "to any state or other entity" and consult with Rachid. However, his bottom line remains that the MFA cannot agree to provide the protections we seek without the approval of Congress. He asserted that Congress would impeach Rachid if she agreed to more without its approval, and that it was inconceivable that Congress would approve the sort of agreement we seek. (Comment: Velasquez's assertions were inconsistent with the positions advanced by Rachid during her April 6 meeting with Rademaker. Rachid proposed using the "procedures" approach as a way to afford the protections the U.S. seeks without the GOP having to enter into an agreement.)

14. (U) This cable was cleared by COL Johnson.

KEANE